

# **EXHIBIT 5**

# Contract for Custom Home Construction

In consideration of the mutual covenants and obligations, this Custom Home Construction Contract (the "Contract") is made as of the date set forth below, by and among the named Builder and Customer set forth below:

Builder:

Phillips Builders  
938 S. Main Maryville Mo 64468  
712-542-7679  
phillipss@wausauhomes.com

Customer:

Larry Martin  
1107 Spruce St.  
Council Bluffs, Iowa

## **Purpose of Contract:**

Customer is given a proposal for a Contract with Builder on this day, 12/08/2020, for the construction of a custom home.

This custom home is defined by the plans & specifications as set forth in this Contract.

Subject to the terms and conditions of this Contract, Builder shall provide the labor, materials, equipment, and services necessary to complete the construction of the custom home consistent with the Plans and Specifications. Slight, non-material deviations from the Plans and Specifications shall be construed as substantial compliance with this Contract.

The Contract contains the entire agreement between the Builder and Customer with respect to the subject matter hereof, and supersedes all prior agreements, understandings, inducements or conditions, express or implied, oral or written, relating hereto, except as contained in the Contract. The terms and conditions of the Contract cannot be modified, amended, added to, or otherwise changed unless such modification, amendment, addition or change is reflected in writing signed by both Parties.

## **Contract Document**

The following documents are incorporated into this Contract:  
X Plans and Specifications

## **Custom Home Site:**

The building site for this Contract is defined by one or all of the following real estate definitions:

X Address: 14976 Y Ave Westboro MO

**Signatures:**

**Warning:** DO NOT SIGN PRIOR TO READING THE ENTIRE CONTRACT, INCLUDING ALL ATTACHMENTS AND ADDENDA. BY SIGNING THIS SECTION, THIS CONTRACT BECOMES LEGALLY BINDING ON THE BUILDER AND THE CUSTOMER, AND EACH PARTY AGREES TO THE TERMS AND CONDITIONS SET FORTH HEREIN.

The signature of any one Customer (if more than one) after the signing of this Contract shall be sufficient for all purposes under the Contract, including Change Orders, if any.

The Contract shall be null and void if a signed copy of the Contract and the first installment payment are not received by the Builder within 60 days from the date of receipt by the Customer of the Contract as listed on page 1.

All persons employed or retained by Builder in connection with its activities under this Contract are employees, agents or independent contractors of Builder. Builder is an independent contractor, separate and distinct from Wausau Homes, Inc. Wausau Homes, Inc. is a supplier of building material for this custom home and is not a party to this Contract

Builder: *Phillips Builders*

Builder or Representative: Scott Phillips

Sign: \_\_\_\_\_

Date: 12/9/20

Customer(s): Larry Martin

Sign: Larry Martin

Date: 12/9/20

## PRICE (Firm Price)

Customer agrees to pay Builder the Total Contract Firm Price of \$240,000.00 for the completion of the custom home, along with any additions resulting from the allowances which, along with the Custom Home Contract Price, in combination will be the Total Contract Firm Price.

Customer acknowledges and agrees that allowance items are only estimates.

The Total Contract Firm Price is subject to adjustment in the event that the actual cost of an allowance item is greater or less than the corresponding amount. Customer further agrees that in such cases where an actual cost exceeds the allowance item estimate there shall be an adjustment to the Total Contract Firm Price reflecting the additional costs. If the actual cost of any allowance item is less than the allowance for such item, Customer will receive a credit against the Total Contract Firm Price equal to the amount by which the cost of the item is less than the allowance.

### Payment Schedule:

\$ 25,000.00	Initial Payment	Upon Execution of this Contract
\$ 25,000.00	Second Payment	On Completion of Foundation Walls
\$ 120,000.00	Third Payment	On House Set Day
\$ 30,000.00	Fourth Payment	On Completion of Framing and Roof
\$ 30,000.00	Fifth Payment	On Completion of HVAC, Plumbing, Electrical Rough-Ins
\$10,000.00	Final Payment	Upon Occupancy

Customer will make progress payments as defined above. The Builder shall submit a request for each payment which shall include a description of the completed portion of the work and the payment amount for the portion of the work subject to the request. The Customer shall make or authorize payment to Builder for the requested amount within five (5) days after receipt of the request. Builder shall furnish a partial lien waiver for Builder's work to the Customer in the amount of the request. Each partial lien waiver from Builder shall be limited to the actual amount of payment in good funds, and shall be conditioned upon Customer's payment of the progress payment to Builder. Any lien waiver provided by Builder to Customer shall automatically be null and void if payment in good funds is not received within five (5) days. The final payment shall be paid at the time of the receipt of the Occupancy Permit.

The parties agree that the Total Contract Firm Price, less the aforementioned Initial Payment (when paid), shall be deposited with or available to the escrow agent acceptable to Customer and Builder pursuant to a fully executed escrow agreement. The Escrow Agreement shall name Builder as escrow proceeds recipient. Escrow Agent may be the bank or selected by the bank providing financing. Customer shall pay any fees or charges for said escrow. Customer agrees to authorize the disbursement of withdrawals from escrow for any change order.

### Change Orders:

After execution of this Contract, any changes to the construction shall be accomplished by agreement of Builder and Customer pursuant to a change order. Each written Change Order shall be signed by the Builder and Customer and shall set forth the change in the work, adjustments to the contract price and the adjustment to the On Time Completion Date. No changes may be made after loan commitment from lending institution, unless a written and signed change order form is signed by lending institution, or if customer supplies all funds associated with change order in advance.

## CUSTOM HOME SPECIFICATIONS

The specifications for this Contract are based on the documents incorporated into this Contract.

- **Site Costs.** All costs required to bring the custom home site to code and building requirements are the responsibility of the Customer, including, but not limited to (included in firm price)
  - Customer will furnish or reimburse cost to Builder for survey, percolation tests, building permits or inspection fees. In the event applicable building codes, ordinances or deed restrictions necessitate changes in the plans or specifications, any change that causes an increase in cost or price shall be borne by Customer.
  - Customer shall pay to Builder, if required, the cost of any filling or grading to bring the custom home site up to grade.
  - Sewer and Water. If sewer and water lines have not been stubbed into the custom home site and/or trenching must be done into the street or sidewalks near the custom home site, an additional charge to Customer shall be incurred. Any amounts payable to the municipality for damage and repair to said street or sidewalks shall be payable by Customer to municipality. In the event that sewer lines enter thru the foundation wall rather than under the flooring, making a floor drain not possible, a sump/ejector pump and pit shall be installed to serve as a floor and washer drain at additional cost. All fill or stone required for lateral placement to be payable by Customer.
  - Well. When referenced in the Contract, the term "well" shall consist of the hole and casing only. The depth of the well shall be measured from the top of the ground to the bottom of the well. Builder cannot guarantee quality or quantity of water. Customer will pay all costs associated with the well above specified allowance in the Contract.
  - Utility Service. Builder shall be responsible to contact and arrange for utility services to the custom home with the servicing companies. All accounts will be in the Customer's name. Any charges payable to the servicing companies are NOT included in the Total Contract Firm Price and are payable by Customer. Customer understands that temporary power will be required for construction of foundation and custom home. Builder shall be responsible to arrange for the necessary temporary power at the Customer's expense. If assistance is required for utility service set up, all costs associated with said assistance shall be paid by Customer.
  - Access to custom home site. Customer will provide Builder, and any necessary construction crews and equipment, safe and easy access to the site as determined by Builder in its sole discretion, including the necessary movement, or removal, of obstacles including but not limited to: overhead power lines, trees, rocks, ditches, and poor driveways. All costs associated with site access shall be paid by Customer.
  - Environmental Site Condition. Builder is not responsible for environmental conditions at the Custom Home Site, including without limitation, storm water and wetland issues affecting the custom home site, contaminated soils, radon, existing lead paint, asbestos, molds, or any other unknown environmental hazards. Customer represents and warrants the custom home site is not in a floodplain or floodway, and that any storm water runoff from the custom home site after construction will not adversely affect any other property. Customer shall indemnify, defend and hold harmless the Builder against any claims or damages, including without limitation, reasonable, actual attorneys' fees, that are based on or result from any environmental site condition set forth under this Section.
- **Substitution Materials.** In the event, Builder is unable to obtain the exact material specified in the plans and specifications attached hereto, through Builders ordinary and usual sources of supply, Builder shall have the right to substitute materials of similar pattern, design and quality.



## ON TIME

### Start Date / On Time Completion Date.

Unless the parties mutually agree otherwise, the work shall start and be substantially completed as follows:

Start Date: 01/01/20      On Time Completion Date: 8/15/21

- **Validity of Lot Ownership.** Customer represents and warrants that he/she has the requisite authority and interest (for example, fee simple ownership of the Custom Home Site) to enter into this Contract for performance of the work on the Custom Home Site. Customer further represents and warrants that there are no recorded deed restrictions, easements, or covenants that would prohibit or impair performance of the work. Customer shall be responsible for furnishing an approved site for construction of the work. The Customer shall defend, indemnify and hold harmless the Builder from any and all liability and damages, including reasonable, actual attorneys' fees, incurred as a result of Customer's breach of this section.
- **Compliance with Local Restrictions and Zoning.** Customer represents that the custom home site described herein at the site complies with all applicable zoning and use regulations, and Customer shall hold the Builder harmless from any and all claims, demands, actions, liabilities, losses, and damages arising out of or related to such regulations. If a survey is necessary to determine any set back lines, or other zoning matter, then the Customer shall provide an acceptable survey at Customer's cost.
- **Site Preparations.** Site preparations consist of preparing Customer's property prior to, during, and upon completion of constructing the custom home. Site preparations include, but are not limited to, marking of property lines, property surveys, erosion control, tree, brush, and stump removal, tree trimming, building and foundation removal, extra fill/grading, hauling of excess fill, driveway, road gravel, top soil, or any subterranean work required. Site preparations are not included in the Contract unless there is a specific cost for site preparations.
- **Approvals/Permits.** The Customer shall obtain all necessary governmental approvals and permits, including, but not limited to, building permits, sanitary/septic permits and subdivision building committee permits. The cost of obtaining such permits shall be payable by Customer. Builder shall not be liable for any delays, failure of performance, or expenses caused by improper zoning.
- **Start Date.** Commencement of the construction by Builder shall begin after all the following prerequisites have been accomplished:
  - All necessary permits have been issued and delivered to Builder, including, but not limited to, building permits, sanitary/septic permits and subdivision building committee permits;
  - Builder has received written notice that the Contract for the purchase of the custom home has been accepted by Wausau Homes, Inc.;
  - All plans, specifications and blueprints for the custom home are initialed by Customer to indicate his or her approval of the contents thereof; and
  - Customer shall deliver to Builder, a certificate of insurance as written proof that Customer has obtained insurance according to attachment "Insurance".
- **Delays.** Builder shall not be responsible for delays caused by events beyond its control, including, but not limited to, utility hook-ups, fire, strike, lockouts, changes requested by Customer, non-payment by Customer, labor disputes, transportation delays, unreasonable weather, energy shortages, material shortages, or other acts of God.
- **Final Walk Through.** At a reasonable, agreed to time after substantial completion, the Builder and the Customer shall conduct a walk through to inspect the custom home site to determine that the Builder completed the work and that there are no construction defects. If there is any unfinished work and/or there are any construction defects, the Builder shall complete the work and/or cure the construction defects within a reasonable amount of time.

- **Interest for Late Payment/Non-Payment.** Any unpaid portion of the Total Contract Firm Price or Additional Charges remaining due to Builder five (5) days after due date (hereinafter "Non-Payment") shall bear interest at the rate of one and one half percent (1.5%) per month or the maximum rate allowed by law, whichever is less. In addition, Customer agrees to pay Builder its reasonable attorneys' fees and collection costs and expenses if legal or collection action is necessary to enforce the terms of the Contract. Upon Non-Payment, Builder shall have the right to stop work until all payments due are made, including interest, fees, costs and expenses.
- **Contract Price Increase.** The Total Contract Firm Price is subject to change in the event construction of the custom home is not commenced by Builder within sixty (60) days of the date of this Contract. If a delay in construction commencement should result in a price increase that is unacceptable to Customer, Customer has the right to terminate this Contract by notifying Builder of such termination, in writing, within five (5) business days of receiving notice of such increased price.
- **Customer Occupancy.** Customer shall be prohibited from taking possession of the custom home by moving property into or occupying the custom home until Builder is paid in full for its services as specified in the Contract. If Customer takes possession of the custom home prior to completion or payment in full, Builder shall, at its option, be relieved and discharged of any further liability or obligation in this Contract, any warranty contained within this Contract is null and void, and the Total Contract Firm Price, plus any additions or deductions in accordance with the terms of the Contract, shall be immediately due and payable. Builder shall have the right to enforce this paragraph by any means permitted by law, including injunctive relief.
- **Damages On Site.** Customer shall be wholly responsible for loss or damages caused to materials stored on the Custom Home Site, in-process construction and the completed custom home site from all causes including without limitation, loss by fire and windstorm. Customer agrees to procure and maintain, at his or her own expense, insurance against such loss in a sum equal to Total Contract Firm Price. Such insurance shall be written to protect Customer and Builder, as their interests may appear. Builder shall be listed as an additional insured until final payment is received.



- **On Time Completion Date.** Subject to any delay provisions set forth in this Contract, the Builder shall accomplish On Time Completion of the work no later than the On Time Completion Date. "On Time Completion" means the earlier of the following:
  - The date the Customer takes possession of the project
  - The date the completion of the work allows for the custom home site to be occupied or used for its intended purpose
  - The issuance of an occupancy permit by the applicable governmental entity

On Time Completion Date acknowledged by the Builder are estimates of the date on which the custom home will be completed and are not binding on the Builder. Failure to deliver or perform pursuant to said On Time Completion Date for any reason whatsoever whether in the Builders control or not, shall not be cause for cancellation by the Customer or for the assertion of damages of any kind whatsoever including, but not limited to, consequential damages, against the Builder. The Builder shall exercise its best efforts to notify Customer of any materials delays in delivery or performance.

#### **WARRANTY & HOME MAINTENANCE:**

- **Warranty.** Builder warrants that the work shall be free from Construction Defects for a period of one (1) year from the On Time Completion Date subject to the limitations set forth below. Although this warranty begins on the On Time Completion Date of custom home, Builder will make no performance of this warranty until Builder has received payment in full from Customer.
- **Construction Defects.** A Construction Defect means a deficiency or omission in the completion of the work that results from defective materials, a violation of applicable building codes or a failure to follow the current adopted standards. Standards of product acceptability or workmanship shall comply with Construction Industry Quality Standards.
- **Notice and Repair/Replacement of Construction Defect.** For a Construction Defect to be covered by this warranty, Customer shall give written notice of the Construction Defect to Builder prior to the date of expiration of this warranty. Upon receipt of the notice from Customer, the Builder shall either replace or repair the Construction Defect, at Builder's sole discretion, in a reasonably prompt manner subject to the terms and conditions of this Contract. Any Construction Defect, latent or otherwise, for which notice is not provided prior to the expiration of this warranty shall not be covered by this warranty. If Customer does not give Builder notice of the Construction Defect and the opportunity to either repair or replace the Construction Defect, at Builder's sole discretion, then the Builder shall not be liable for the Construction Defect.
- **Exclusions.** Builder shall not be obligated to replace or repair any Construction Defect or pay for the replacement or repair of any Construction Defect caused, in whole or in part by: (i) Customer improper or insufficient maintenance of the custom home or improper or insufficient maintenance or operation of any of the custom home systems; (ii) natural occurrences beyond Builder's control; (iii) defects in materials supplied by anyone other than the Builder or agents acting on the Builder's behalf; (iv) any work performed by Customer or Customer's contractors, subcontractor's or agents; (v) normal wear and tear and normal usage; and (vi) materials, products or systems covered by other warranties such as manufacturers' warranties. Builder's warranty is not assignable or transferable to any subsequent Customer of the custom home without the Builder's prior written consent.
- **Other Warranties.** Builder hereby assigns to Customer any and all manufacturers' warranties pertaining to any fixtures, appliances and equipment and other products covered by a manufacturer's warranty that are part of the custom home. In the event Builder repairs, replaces or pays the cost of repairing or replacing any defect covered by this warranty which is covered by other insurance or other warranties, then Customer shall assign the proceeds of such insurance or warranties to Builder to the extent of the cost to the Builder for such repair or replacement, or the extent of the payment.
- **Exclusive Remedy.** This warranty shall be the sole and exclusive remedy under this Contract for any and all Construction Defects regardless of the form of the claim (i.e., whether based on statute, contract, or tort (negligence, strict liability or otherwise)). THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, USE, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE) AND ANY AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.



- **Interior Conditions.** Warning: Energy efficiency is achieved by construction methods which reduce air infiltration and air circulation. This may result in a concentration of water vapor from cooking, showering, etc., which, at excessive levels, can cause property damage, concentration of mold, radon or chemical compounds released from soil, household furnishings, personal possessions, and building materials. Customer can minimize adverse effects by proper utilization and maintenance of ventilation fans and/or other ventilation devices installed by the Builder and by opening doors and windows to increase ventilation. CUSTOMER HEREBY ACKNOWLEDGES THAT CUSTOMER HAS BEEN INFORMED OF SUCH HEALTH RISK AND CUSTOMER ASSUMES ALL RISKS OF DAMAGE OR INJURY WHICH MAY ARISE AS A RESULT OF, OR IN ANY WAY CONNECTED WITH SUCH CONSTRUCTION METHODS AND HEREBY FULLY, FINALLY AND FOREVER RELEASES AND DISCHARGES BUILDER, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, AND AGENTS FROM AND AGAINST ALL CLAIMS, LIABILITIES AND EXPENSE AND DAMAGES WHATSOEVER, WHETHER NOW KNOWN OR HEREAFTER KNOWN, WHICH CUSTOMER OR ITS ASSIGNS MAY HEREAFTER HAVE AGAINST BUILDER, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, AND AGENTS REGARDING TO THE MATTERS REFERRED TO IN THIS PARAGRAPH.

#### **CONTRACT CANCELLATION AND EXCEPTION CLAUSES:**

- **Right to Reject.** Builder reserves the right to reject this Contract for Custom Home Construction should an error be committed by its employee(s) or representative(s) in computing the costs hereof. Should this occur, Builder will notify Customer and the Parties may re-negotiate the Total Contract Firm Price.
- **Customer's Representations.** Customer represents and warrants to Builder that custom home site is zoned properly by the applicable governing authority for the construction and completion of the custom home. The Contract shall be null and void in the event any governmental authority shall refuse to issue any necessary building or sanitary permit(s) for the work contemplated herein.
- **Contract Cancellation.** Cancellation of this Contract by Customer must be in writing and sent by certified mail to Builder. If notice of cancellation is received by Builder within two (2) weeks of its commencement, \$1500.00 of the first installment shall be retained by Builder as well as amounts covering all costs for labor and material both actual and future non-refundable costs committed to suppliers, vendors and employees of Builder, subcontractors, from Customer, as liquidated damages. Thereafter, Customer shall not have a right to cancel the Contract.

Builder may cancel the Contract and collect liquidated damages in the amount covering all costs for labor and material, both actual and future non-refundable costs committed to suppliers, vendors and employees of builder, subcontractors, from Customer if Customer does not provide proof of financing from Customer's lender or place the Total Contract Firm Price amount in Escrow within 60 days of receipt of contract.

- **Possession/Control.** During building operations and prior to final payment, Builder shall have sole and exclusive physical possession of the custom home. If Customer takes possession of the custom home prior to completion or payment in full, Builder shall, at its option, be relieved and discharged of any further liability or obligation on the Contract, any warranty contained within this Contract is null and void, and the Total Contract Firm Price, plus any additions or deductions in accordance with the terms of the Contract, shall be due and payable at once

## ARBITRATION:

Any dispute or controversy between Builder and Customer arising out of or related to the Contract shall be decided through binding arbitration conducted pursuant to the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association. If either party refuses to submit a claim to arbitration, or fails to abide by all of the rules adopted, the non-breaching party shall be entitled to recover all costs, including reasonable, actual attorneys' fees, incurred in seeking further action to enforce the terms of this provision and/or to compel arbitration. Nothing in this section precludes or requires the parties to mediate this matter prior to invoking their right to arbitration.

- **Breach by Builder.** In the event that Builder breaches the terms of this Contract, Customer shall be entitled to recover Customer's actual damages incurred as a result of Builder's default. Customer hereby waives all claims for consequential or incidental damages. This section is subject to the terms and conditions of the warranty.
- **Breach by Customer.** In the event that Customer breaches the terms of this Contract, Builder shall be entitled to recover Builder's actual damages, including without limitation, Builder's lost profit, incurred as a result of Customer's breach. Builder hereby waives all claims for consequential or incidental damages. This section is subject to the terms and conditions of the warranty.
- **Copyrights.** Customer represents that all blueprints, floor plans, and other copyrightable materials provided to Builder have been properly obtained for use by Builder, without infringing upon another's copyrights. Customer agrees to hold Builder harmless for any copyright infringement in regards to usage of materials submitted to Builder, and that Customer takes full responsibility for copyrighted materials supplied by Customer. Customer understands and agrees to pay any and all expenses, including all reasonable attorneys' fees and expert witness fees, of Builder, its officers, directors, shareholders, employees, suppliers, subcontractors and agents that arise from any alleged copyright infringement.
- **Marketing.** Customer authorizes Builder and Builder's suppliers to use Customer's names, floor plans, photographs, and all other materials for marketing purposes. Customer agrees to hold Builder, and its suppliers harmless for any liability and/or compensation for use of Customer's names, floor plans, elevations, photographs, and other materials.
- **Severability.** If any section (or part of a section) hereof is found to be unenforceable in each additional proceeding, then the remainder shall continue in full force and effect as if the unenforceable section (or part thereof) did not exist.
- **Assignment.** Customer shall not assign his or her rights and obligations under this Contract without Builder's advance written consent, which may be given or withheld at its sole discretion.
- **Force Majeure.** Builder shall not be liable for any failure to discharge its obligations hereunder due to any act or neglect of Customer, Customer's agent, or any separate Builder employed by Customer, or occasioned by changes in the custom home site, or due to strikes, accidents, fires, shutdowns of its facilities or facilities supplying it, orders or requirement of the United States Government, embargoes, inability to secure transportation facilities, or any other contingencies beyond the control of Builder, including, but not limited to, those arising out of or due to National Defense activities, or emergency conditions.
- **Entire Agreement.** The Contract contains the entire understanding between and among the Parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Contract for Construction.

